

less any salvage value and any enhanced value. In the latter cases, the amount of the damages should be the fair value of the property, less any salvage value. Whether or not there has been any enhanced value (*i.e.*, whether the fair value of the structure immediately after the repairs is greater than its fair value immediately before the damage occurred) is a matter to be determined from an actual survey of the structure and knowledge of its age and condition. Where maintenance has equalled depreciation there probably would be no enhanced value.

(4) If the parties deny their responsibility, or if they refuse or neglect to remove any unlawful structure or deposit or to repair the damages within the time specified by the District Engineer, the matter will be reported to the Chief of Engineers with such evidence as the District Engineer may be able to obtain and his recommended action under section 17 of the Act of March 3, 1899. In a situation requiring immediate action, the District Engineer may report the case directly to the U.S. attorney for the district. The Chief of Engineers will be advised of such action by a written report. Although the Corps of Engineers has certain police powers under this Act it has been the long standing policy to secure compliance with its provisions short of legal proceedings. Accordingly every effort will be made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, while minor and unintentional or accidental violations of the provisions of the Act need not be reported to the Chief of Engineers, all willful or intentional violations and all cases in which the parties responsible refuse or neglect to remove the unlawful structure or deposit or to make good the damages suffered should be reported promptly to the Chief of Engineers in accordance with the above. It is the policy not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Each report recommending prosecution should be accompanied by a full statement of the case and copies of correspondence relating thereto.

(5) The procedure in cases involving injurious deposits is similar to that described for other violations of law except that as the damage caused thereby cannot be repaired readily there will be no reason for serving any notice on the parties responsible for the violations further than to bring to their attention the consequences thereof.

(6) Section 6 of the River and Harbor Act approved March 3, 1905 (33 Stat. 1148; 33 U.S.C. 417) provides that expenses incurred by the Corps of Engineers in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examinations into alleged violations of laws for protection and preservation of navigable waters shall be payable from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected. If such funds are not available in sums judged by the Chief of Engineers to be adequate, they shall be payable from any funds available for examinations, surveys, and contingencies of rivers and harbors.

[33 FR 18670, Dec. 18, 1968, as amended at 36 FR 17855, Sept. 4, 1971; 51 FR 45765, Dec. 22, 1986; 53 FR 27512, July 21, 1988]

#### **§ 209.180 Temporary closure of waterway to navigation.**

(a) When an application is received for the temporary closure of a waterway for the construction of a structure or the performance of other work in the waterway, the District Engineer will assure himself of the necessity for the closure and arrange after informal communication with any important navigation interests concerned the time and duration of the closure which will enable the operations to be completed with the least interference with navigation. If there is no question as to the necessity and propriety of the closure, the District Engineer is authorized to inform the applicant as follows: "The Department of the Army will interpose no objection to the closure for a stated period beginning at a specified date: *Provided*, That prior thereto the applicant will notify navigation interests by an advertisement in the press or otherwise as the District Engineer may approve and on the understanding that the waiver of objection

does not affect the liability of the applicant for any damages that may arise by reason of the closure." The letter to the applicant will be signed "By Authority of the Secretary of the Army" and distribution made as prescribed for permits.

(b) District Engineers will give careful consideration to the effect of any closure on through navigation. Should coordination with other districts be necessary the case will be forwarded to the Division Engineer for such coordination.

(c) Cases not falling within the authority above conferred will be forwarded to the Chief of Engineers with the recommendations of the Division and District Engineers.

#### § 209.190 [Reserved]

#### § 209.200 Regulations governing navigable waters.

(a) *Publication of regulations.* (1) Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, are contained in the Code of Federal Regulations, title 33, Navigation and Navigable Waters, Chapter II.

(2) District engineers (or division engineers if considered preferable by the latter to avoid duplication in cases where the regulations involved apply to more than one district) will distribute copies of departmental regulations to all known interested parties as soon as their publication has been noted in the FEDERAL REGISTER. In the case of regulations applicable to more than one division, distribution will be handled as agreed upon by the division engineers concerned. Under the Administrative Procedure Act (5 U.S.C. 551-553), publication in the FEDERAL REGISTER shall be not less than 30 days prior to the effective date except as otherwise provided upon good cause found and published with the regulations.

(b) *Navigation regulations.* (1) Section 7 of the River and Harbor Act approved August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) authorizes the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require

for the protection of life and property, or for operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. The statute provides for the posting of regulations and punishment for violations.

(2) Section 6 of the River and Harbor Act approved June 13, 1902 (32 Stat. 374; 33 U.S.C. 499) provides that regulations prescribed by the Secretary of the Army may be enforced as provided in section 17 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413).

(3) District Engineers will take action with respect to regulations prescribed for waterways under their jurisdiction:

(i) To insure that the regulations are brought to the attention of the public.

(ii) To insure that the regulations are properly and fairly administered.

(iii) To recommend any revisions necessary to permit full use of the waterway by the public.

(c) *Danger zones.* (1) The Secretary of the Army has authority to prescribe regulations for the use and navigation of any area of the navigable waters of the United States or waters under the jurisdiction of the United States likely to be endangered by Department of Defense operations. This authority is pursuant to the provisions of Chapter XIX of the Army Act of July 9, 1918, or of section 7 of the River and Harbor Act of August 8, 1917.

(2) On receipt of a request from any element of the Department of Defense or other agency for approval by the Secretary of the Army of regulations establishing danger zones under authority of either Act, the District Engineer will, prior to issuing any public notice, make certain that the applicant: (i) Has coordinated its proposed operations with any operations being conducted or contemplated by other agencies in the same area with a view to avoiding interagency conflicts, (ii) has obtained clearance from the proper Regional Subcommittee on Airspace, Rules of the Air and Air Traffic Control (Air Coordinating Committee), where the use of airspace is involved,